IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 24 of 2007 (O&M)

Date of Decision: 12.10.2007

Onkar Singh & Anr. ...Appellants

Vs.

Karnail Singh & Ors. ...Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Parveen Kumar, Advocate,
for the appellants.

Mr.Sanjay Majithia, Advocate,
for respondent No.1.

Mr.H.K.Auror, Advocate,
for respondent Nos. 2 to 4.

Vinod K.Sharma, J. (Oral)

This order shall dispose of two SAO bearing Nos. 24 and 25 of 2007 both titled Onkar Singh & Anr. Vs. Karnail Singh & Ors., as common question of law and facts are involved in both these appeals.

For facility facts are being taken from SAO No.24 of 2007.

This appeal has been filed against the order dated passed by the learned Additional District Judge, Hoshiarpur vide which appeal filed by

the defendant-respondents has been allowed and the case remanded back to the learned trial court for decision afresh.

The appellant-plaintiffs had filed a suit for declaration that they are joint owners in possession of the property in dispute and they also challenged the power of attorney dated 26.7.1994 and the sale deeds dated 17.8.1994 and 9.9.1994 to be illegal, null and void being the result of fraud and fabrication along with consequential relief of restraining the defendant-respondents from interfering in the peaceful possession of the plaintiff-appellants. In the alternative relief of possession was claimed.

The suit was based on the fact that Balwinder Kaur alias Bimla was wife of Gurdev Singh and mother of Onkar Singh. She had not been heard of since the year 1965 and therefore, she was to be presumed to be dead. The plaintiffs claimed themselves to be the only legal heirs and therefore, entitled to inherit her estate. A decree was also said to have been passed in favour of the plaintiffs on 7.6.1995 on which the mutation was sought. It is the claim of the plaintiffs that it was at that time that they came to know about the execution of the sale deeds in favour of the defendant-respondents.

The suit was contested. Besides taking preliminary objections the allegations on merit were also disputed. One of the pleas taken by the defendant-respondents was that they were bona fide purchasers for consideration. However, on the pleadings of the parties, the learned Trial Court framed the following issues:-

1. Whether the plaintiffs are joint owners in possession in the suit land?OPP

2. Whether the power of attorney dated 26.7.1994 and sale deeds dated 17.9.1994 and 9.9.1994 are null and void, ineffective and not binding upon the plaintiffs in any manner? OPP
3. Whether the plaintiffs are entitled for declaration and permanent injunction as prayed for? OPP
4. Whether Balwinder Kaur who was unheard since 1965, is presumed to be dead? OPP
5. Whether the suit is not maintainable? OPD
6. Whether the plaintiffs have got no locus standi to file the present suit? OPD
7. Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD
8. Whether the suit is barred under order 2 Rule 2 CPC and under Order 9 Rule 9 CPC? OPD
9. Whether the suit is barred for principle of res judicata? OPD
10. Relief.

After the parties were allowed to lead evidence the suit filed by the plaintiff-appellants was ordered to be decreed against which the defendant-respondents went in appeal. The learned lower appellate court came to the conclusion that in view of the specific pleadings of the defendant-respondents that they were bona fide purchasers for consideration it was incumbent upon the learned trial court to have framed the said issue. Accordingly, ordered that the following issue be framed:-

"Whether appellants No.2 to 4 are bona fide purchasers or not?"

Learned lower appellate court came to the conclusion that this was a material issue on which adjudication was necessary. However, as the said issue was not framed the findings of the learned trial court could not be upheld. Consequently, the findings recorded by the learned trial court on all the issues were set aside and the case remanded back to the learned trial court for deciding the case afresh in accordance with the law after allowing the parties to lead evidence on additional issue so framed.

Learned counsel for the appellants has challenged the order passed by the learned Additional District Judge, Hoshiarpur on the ground that the impugned order cannot be sustained as the findings recorded by the learned trial court could not be upset without recording reasons therefor. If any additional issue was required to be framed in that event the learned lower appellate court could at best frame the said issue and thereafter seek report from the learned trial court on the said issue after permitting the parties to lead evidence. In support of this contention, learned counsel for the appellants has placed reliance on the judgments of this court in the cases of **Hasham and ors. Vs. Jhangi Ram (2005-2) P.L.R.242** and **Gandhrab Raj Sharma Vs. Daulat Singh & Ors. 2007 (1) RCR (Civil) 91.**

There is force in the contention raised by the learned counsel for the appellants. Merely because an additional issue is framed, learned lower appellate court was not justified to set aside the findings of the learned trial court on all the issues without going into the merits of the case.

Learned lower appellate court, could decide the appeal on merit after getting report from the trial court on the additional issue so framed.

Accordingly, this appeal is allowed. The impugned order is set aside. Learned lower appellate Court is directed to get the report on the additional issue framed from the learned trial court and after receipt thereof dispose of the appeal on merit in accordance with law.

(Vinod K.Sharma)
Judge

12.10.2007
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